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SUBJECT: ROADBLOCKS MANY TO GUTIERREZ RETURN

1. SUMMARY. Former Ecuador President Lucio Gutierrez has announced his intention to return to Ecuador to confront those who deposed him. An imminent Gutierrez return appears unlikely, however, owing to the myriad of charges, criminal and otherwise, filed against him. The ex-president's political enemies -- to include Palacio Administration officials, members of Congress, and human rights leaders -- accuse Gutierrez of human rights abuses, corruption, and even "crimes against humanity" (before the International Criminal Court). Working in Gutierrez's favor is Ecuadorian law, which provides presidents limited immunity, and the absence of a Supreme Court, the correct venue to try the former chief executive for acts committed while in office. Hurting hopes for a homecoming, Minister of Government Mauricio Gandara claims Gutierrez has "attacked the security of the state" with his recent anti-Palacio rhetoric. A final impediment, Quito's "forajidos," middle-class street protesters who chased Gutierrez from power, aren't likely to welcome the ex-president like MacArthur to the Philippines. End summary.

Pick a Charge, Any Charge

2. From the United States June 8, Gutierrez proclaimed his desire to return to Ecuador and "reclaim what was taken from me." Following last week's appearance at the InterAmerican Dialogue, however, Ecuador's latest ex-president has lowered his profile, and we have heard nothing regarding upcoming southbound travel.

3. Disincentives over a Gutierrez return are many. Ecuador's Attorney General office (Fiscalia) is tracking 22 cases against Gutierrez administration officials regarding alleged police repression of protesters April 19-20. Just one, however, targets the former president directly, accusing Gutierrez of complicity in the death (by heart attack) of Chilean forajido Julio Garcia. In connection with this case, current Administration Secretary General Luis Herreria Bonett claims a detention order against Gutierrez exists; according to Ecuador's criminal procedures code, he continues, police must obey it. Other Fiscalia cases reference embezzlement within the Social Welfare Ministry during Gutierrez's tenure, poor police protection provided to the president's political opponents, and Gutierrez cousin/confidant Renan Borbua's supposed incitement of riotous counter-marches during the administration's dying days.

4. Members of Congress are not silent, either. They claim the ex-president misused public funds in support of his Patriotic Society Party's 2004 electoral campaign, contracted Coastal thugs to combat the forajidos in Quito streets, and personally benefited from funds generated during Ecuador's hosting of the 2004 Miss Universe pageant. They have demanded the Fiscalia take action and have debated legislation changes prohibiting "constitutionally" removed presidents from again assuming public office.

5. The Latin American Association for Human Rights (ALDHU), a left-leaning NGO, accuses Gutierrez of 70 cases of violation of human rights in connection with forajido "suppression." Ecuador's Anti-Corruption Commission (CCCC) alleges the ex-president utilized public funds to support Zero Corruption, a violent, pro-Gutierrez group whose members briefly stormed the offices of USG-funded electoral NGO Citizen Participation. The CCCC also claims Gutierrez benefited from "irregularities" in government oil contracts.

6. Not to be outdone, the Foreign Minister Antonio Parra has launched an internal investigation into allegations that Gutierrez administration co-opted ministry staff into offering several presidential relatives positions in the GoE's overseas missions. Concurrent MFA inquiries concern the alleged sale of over 6000 Ecuadorian visas to unqualified candidates. The Fiscalia is cooperating with the latter investigation.

7. Gutierrez even faces legal problems originating outside Ecuador. NGOs and Monsignor Luis Alberto Luna, a prominent Gutierrez opponent, have gone before the ICC in Brussels, accusing the former president of crimes against humanity. Said crimes include his "systematic attacks on peaceful civilian demonstrators," "destruction of judicial independence in Ecuador," "attempts to squelch freedom of expression and assembly," and "policy of denying indigenous populations their full rights."

Quito "Street" Not Amused

18. Middle-class Quitenos assembling en masse in the capital's streets played a great role in Gutierrez's April 20 downfall. Demanding that "todos se vayan" ("all must go"), these forajidos demanded of the Palacio government swift change and more direct democracy. There has been little of either, however. While the forajidos' dissatisfaction has yet to manifest itself in renewed street protests, a Gutierrez return undoubtedly would prove a catalyst for action. Lynch mobs demanding the former president's head are not unimaginable.

Former President not Unarmed, However

19. Gutierrez's legal team likely sees hope in Ecuadorian law, which confers numerous privileges to chief executives. Legal experts note that prosecuting an ex-president for acts committed in office requires Congressional authorization, for example (while the current legislative lineup leans decidedly against Gutierrez, potential turncoats are many). Similarly, the absence of a Supreme Court works in Gutierrez's favor. Although Ecuador's highest law is mute on the point, constitutionalists assert that only the Supreme Court can try presidents, sitting or former. Despite quick legislative action to craft a process to fill the Court, predictable infighting has made progress so far glacial, and Ecuador's justice system will remain headless for months.

Leaving Office Uncovers Achilles Heel

110. Aware that convicting Gutierrez for "crimes" committed while in office appears difficult, Mauricio Gandara, Ecuador's current minister of government (interior minister-equivalent) and a long-time Gutierrez-basher, has focused on the ex-president's recent activities. Gandara argues Gutierrez "attacked the security of the state" when, in comments made in the United States, the former president asserted he was deposed in a coup. Citing Article 130 of Ecuador's criminal code, the government minister June 13 filed a complaint against Gutierrez at the Fiscalía.

COMMENT

11. While in office, Lucio Gutierrez regularly floated poorly staffed political trial balloons (his volunteering of Ecuadorian territory for GoC-FARC negotiations comes immediately to mind). Announcing his "imminent" return appears the latest in the series. Other than stoking his minuscule base in hometown Tena, deep in the Amazon, the former president's "I shall return" provoked little positive groundswell. And regardless of presidential immunities or the non-existence of the Supreme Court, we'd wager Gutierrez would be staring through bars - or worse, lying in a hospital bed -- if he showed up soon in Quito. END COMMENT.
Kenney